IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 870 OF 2007

Hindustan Lever Ltd. ..Applicant
(Org.Accd.No.2)

Vs.

The State of Maharashtra
(At the instance of Inspector of Legal Metrology, Andheri Division, 60 Hill Road, Bandra (W), Mumbai.) ..Respondent

Mr. Shirish Gupte, Senior Advocate with Mr. Prakash Naik for applicant.

Mr. P.A. Pol, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : October 23, 2007.

P.C.:

1. Heard Mr. Gupte the learned Senior Counsel with Mr. Prakash Naik for the applicant-company. Mr. Pol, the learned APP, appears for the State. Affidavit-in-reply has been filed on behalf of the original complainant.

2. Rule. Mr. Pol, the learned APP, waives

service for the State. By consent of the parties, the Rule is made returnable forthwith.

3. This application filed under Section 482 of Cr.P.C. prays for quashing of the proceedings in Criminal Case No. 104/SWM/2000, initiated on the basis of the complaint filed by the Inspector of Legal Metrology, Andheri Division, 60 Hill Road, Bandra (W), Mumbai for the offences punishable under Section 51 of the Standards of Weights and Measures (Enforcement) Act, 1985 (for short the Act). The complainant was appointed under Section 5(1) of the Act and was authorised to lodge complaints under Section 63(1) of the Act. As per the complainant, the accused i.e. (1) Shri H.K. Gogri of M/s. Anjali General Stores, Takshila Apts., B-2, Shop No.8, M.C. Road, Andheri (E), Mumbai 400 094 and (2) All Directors of Hindustan Lever Ltd. had committed a breach of Section 33 of the Act and Rule 23(1) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (for short the Rules).

4. As per the complainant, during his inspection on 28/7/2000 to the premises of M/s.Anjali General

Stores, the following irregularities were observed:-

"On the bottle of surf excel written price as per Rule 2(r) of the Rules was not written/printed."

. Due to the above irregularity, the goods were seized from the said premises vide seizure Receipt No.04929 dated 28/7/2000. The complainant, therefore, had reasons to believe that the accused had prima facie contravened Rule 33(1) of the Rules and Section 51 of the Act. In the complaint it was further stated that though the contravention was compoundable as per Section 73 of the Standards of Weights and Measures Act, 1976 and Section 65 of the Act by the Deputy/Assistant Controller of Legal Metrology, such an application was not made by the accused and, therefore, he had to file the complaint before the learned Metropolitan Magistrate. Sub-Rules 1 and 2 of Rule 23 of the Rules read as under:-

23. Provisions relating to wholesale dealer and retail dealers.- (1) No wholesale dealer or retail dealer shall sell, distribute,

deliver, display or store for sale any commodity in the packaged form unless the, package complies with, in all respects, the provisions of the Act and these rules.

(2) No retail dealer or other person including manufacturer, packer and wholesale dealer shall make any sale of any commodity in packed form at a price exceeding the retail sale price thereof.

Explanation.- For the removal of doubts, it is hereby declared that a sale, distribution or delivery by a wholesale dealer to a retain dealer or other person is a 'retail sale' within the meaning of this sub-rule.

5. It is clear that under Sub-Rule(1) of Rule 23 the manufacturer or packer of the commodity in the packed form is not cover, whereas under Sub-Rule (2) a retail dealer or any other person including manufacturer, packer and wholesale dealer is covered. The default under Rule 23(1) brings within its ambit

only the wholesale dealer or retail dealer. Hence, in the instant case it is only the accused no.1 who is within the ambit of Rule 23(1). Admittedly, Rule 23(2) is not attracted in the instant case. Consequently, it was not permissible to file the complaint against the present applicant-company under Rule 23(1) of the Rules.

6. In addition, the second accused in the complaint has been described as "All the directors of Hindustan Lever Ltd.". It is well known that in every criminal case the accused must be named specifically. Section 62 of the Act deals with the offences by companies and sub-section (1) therein states that if the person committing an offence under the Act is a company, every person who, at the time the offence was committed, was in-charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Proviso under Section 62 (1) states that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed

without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence. It would be, therefore, imperative for any complaint instituted under the Act that when the offences are attributed to any company, like the present applicant, its Directors, who are the persons in-charge of and responsible to the company for the conduct of the business as well as the company are impleaded by name so that the process is issued against such individuals for specific offences punishable under the Act and the Rules. This has not been done in the instant case and the defect is fatal. It is clear from the record that the learned Additional Sessions Judge did not consider these aspects and thus erred in rejecting the revision.

7. The process order passed by the trial court reads as under:-

"Issue summons to accused. Returnable on 7/11/2000."

. This order was passed on 25/8/2000 and the accused no.2 were not named. Whereas in the complaint

the accused were named as "All directors of Hindustan Lever Limited". Thus the summons could not be served. This is another reason in support of quashing of the proceedings.

8. On the point of delay in challenging the process issued on 25/8/2000, it must be noted that initially the applicant-company had preferred an application before the learned Metropolitan Magistrate for recall of the process and the said application remained undecided for quite some time. After the Supreme Court rendered its judgment in the case of Adalat Prasad vs. Rooplal Jindal and ors. **[(2004) 7 SCC 338]** the company approached this court by filing Criminal Application No.7874 of 2005 and on 12/12/2005 the said application was disposed by this court, granting liberty to the applicant to approach the Sessions Court by a Criminal Revision Application under Section 397 of Cr.P.C. The Company filed Criminal Revision Application No. 5376 of 2006 along with Misc. Application No. 1607 of 2006 for condonation of delay. However, by order dated 18/11/2006 the Misc. Application came to be rejected and, therefore, the applicant has filed the instant

Criminal Application. In these obtaining circumstances it cannot be, therefore, stated that the company has approached this court belatedly.

9. In the premises, this petition succeeds and the same is hereby allowed. Rule is made absolute in terms of prayer clause (b) qua the applicant-company.

(B.H. Marlapalle,J.)